

By Mr. GRAHAM: Petition of 1,500 river men and business men of Allegheny County, Pa., for the erection of additional locks and dams on the Allegheny River—to the Committee on Rivers and Harbors.

By Mr. GRONNA: Petition of citizens of Richland County, N. Dak., for retention of import duty on grain—to the Committee on Ways and Means.

By Mr. HAMMOND: Petition of J. C. Aldrich and 85 others, of Currie, Minn., against duty on tea and coffee—to the Committee on Ways and Means.

By Mr. HINSHAW: Petition of citizens of Utica, Seward County, Fourth Congressional District of Nebraska, favoring parcels-post and postal savings bank laws—to the Committee on the Post-Office and Post-Roads.

By Mr. HOWELL: Petition of B. F. Peixotto Lodge, No. 421, favoring the Goldfogle resolution, relative to American citizens of the Jewish faith traveling in foreign countries—to the Committee on Foreign Affairs.

By Mr. KNOWLAND: Petition of citizens of Oakland, Cal., for an effective exclusion law against all Asiatics save merchants, students, and travelers—to the Committee on Foreign Affairs.

By Mr. LINDBERGH: Petition of citizens of Cokato, Minn., protesting against a duty on tea and coffee—to the Committee on Ways and Means.

Also, petition of Business League of St. Paul, Minn., against the Taliaferro naval-stores regulation bill (S. 7867)—to the Committee on Naval Affairs.

By Mr. MANN: Petition of New York Board of Trade, favoring increase of salaries of United States judges (S. 6973)—to the Committee on Appropriations.

Also, petition of trustees of Newberry Library, against increase of duty on books—to the Committee on Ways and Means.

Also, petition of American Nonpartisan Tariff League, opposing creation of a permanent nonpartisan tariff commission—to the Committee on Ways and Means.

Also, petition of Third United Presbyterian Church of Chicago, against extradition of Christian Rudowitz and other Russian political refugees—to the Committee on Foreign Affairs.

By Mr. NEEDHAM: Petition of citizens of Hollister, Cal., against parcels-post and postal savings bank laws—to the Committee on the Post-Office and Post-Roads.

Also, petition of H. S. Spence and others, against passage of Senate bill 3490—to the Committee on the District of Columbia.

By Mr. NELSON: Petition of sundry citizens of Wisconsin, against the Johnston Sunday bill (S. 3940)—to the Committee on the District of Columbia.

By Mr. OLCOTT: Paper to accompany bill for relief of Amanda Ferrero—to the Committee on Invalid Pensions.

By Mr. PADGETT: Paper to accompany bill for relief of estate of Mitchell J. Childress—to the Committee on War Claims.

Also, papers to accompany bills for relief of Roa Z. King and Martha Johnson—to the Committee on War Claims.

Also, paper to accompany bill for relief of Daniel C. Carter—to the Committee on War Claims.

By Mr. SPERRY: Petition of citizens of New Haven, Conn., protesting against the Johnston Sunday bill—to the Committee on the District of Columbia.

Also, petition of Beacon Valley Grange, of Naugatuck, Conn., favoring a national highways commission—to the Committee on Agriculture.

By Mr. STEENERSON: Petition of Business League of St. Paul, Minn., against S. 7867 (Taliaferro naval stores regulation bill)—to the Committee on Interstate and Foreign Commerce.

Also, petitions of J. W. Hazon and others, of Parkers Prairie, Minn., and Andrew Vick and others, of Bronson, Minn., against a duty on tea or coffee—to the Committee on Ways and Means.

By Mr. STEVENS of Minnesota: Petition of Lithographers' International Protective Beneficial Association of St. Paul and Minneapolis, favoring increase of tariff on lithographic work—to the Committee on Ways and Means.

Also, petition of merchants of St. Paul, against duty on tea and coffee—to the Committee on Ways and Means.

By Mr. WANGER: Petition of Middletown Grange, No. 684, Patrons of Husbandry, Jesse C. Webster, master, of Middletown, Bucks County, Pa., and other residents of Bucks County, in favor of a national highways commission and federal aid in road construction (H. R. 15837)—to the Committee on Agriculture.

Also, petition of Illinois Manufacturers' Association, in favor of the enactment of the ocean mail steamship bill—to the Committee on the Merchant Marine and Fisheries.

Also, petitions of Northern Pine Manufacturers' Association, of the Michigan Hardwood Manufacturers' Association, and of the Hardwood Lumber Manufacturers of Wisconsin, against the reduction or repeal of the tariff on lumber—to the Committee on Ways and Means.

Also, petition of Hardwood Manufacturers' Association of the United States, against the repeal or the reduction of the tariff duties on lumber—to the Committee on Ways and Means.

By Mr. WASHBURN: Paper to accompany bill for relief of Bridget T. Elliott (previously referred to the Committee on Invalid Pensions)—to the Committee on Pensions.

## SENATE.

WEDNESDAY, February 3, 1909.

Prayer by the Chaplain, Rev. Edward E. Hale.

The Secretary proceeded to read the Journal of yesterday's proceedings, when, on request of Mr. GALLINGER, and by unanimous consent, the further reading was dispensed with.

The VICE-PRESIDENT. The Journal stands approved.

### ELECTORAL VOTE OF COLORADO.

The VICE-PRESIDENT laid before the Senate a communication from the Secretary of State, transmitting, pursuant to law, an authenticated copy of the certification of the final ascertainment of electors for President and Vice-President appointed in the State of Colorado, which, with the accompanying paper, was ordered to be filed.

### URGENT DEFICIENCY APPROPRIATIONS.

The VICE-PRESIDENT laid before the Senate the action of the House of Representatives disagreeing to the amendments of the Senate to the bill (H. R. 26399) making appropriations to supply urgent deficiencies in the appropriations for the fiscal year ending June 30, 1909, and requesting a conference with the Senate on the disagreeing votes of the two Houses thereon.

Mr. HALE. I move that the Senate insist upon its amendments and agree to the conference asked by the House, the conferees to be appointed by the Chair.

The motion was agreed to; and the Vice-President appointed Mr. HALE, Mr. GALLINGER, and Mr. TELLER the conferees on the part of the Senate.

### MESSAGE FROM THE HOUSE.

A message from the House of Representatives, by Mr. W. J. Browning, its Chief Clerk, announced that the House had passed the bill (S. 8460) to provide for the deduction of hatchways and water-ballast space from the gross tonnage of vessels.

The message also announced that the House had passed a bill (H. R. 26915) making appropriation for the support of the army for the fiscal year ending June 30, 1910, in which it requested the concurrence of the Senate.

### ENROLLED BILLS SIGNED.

The message further announced that the Speaker of the House had signed the following enrolled bills, and they were thereupon signed by the Vice-President:

S. 8695. An act extending the time for the construction by James A. Moore, or his assigns, of a canal along the government right of way connecting the waters of Puget Sound with Lake Washington;

H. R. 4119. An act to pay John Wagner, of Campbell Hall, N. Y., for carrying the mails;

H. R. 6032. An act to pay to the administratrix of the estate of George W. Fleming for services rendered as letter-box inspector from March 29, 1902, to June 13, 1903;

H. R. 7006. An act to correct the military record of George W. Hedrick;

H. R. 7807. An act to place John Crowley on the retired list of the United States Navy;

H. R. 7963. An act for the relief of Patrick Conlin;

H. R. 8050. An act for the relief of James R. Wyrick;

H. R. 10416. An act to correct the naval record of Lieut. Hilary Williams, U. S. Navy;

H. R. 10606. An act for the relief of Robert S. Dame;

H. R. 10986. An act for the relief of L. H. Lewis;

H. R. 10987. An act for the relief of A. A. Lewis;

H. R. 13319. An act for the relief of the heirs of Thomas J. Miller;

H. R. 13955. An act to compensate E. C. Sturges for property lost during the Spanish-American war;

H. R. 14361. An act to reimburse the Eastern Salt Company, of Boston, Mass., for certain excess duty;

H. R. 15448. An act to amend section 12 of an act entitled "An act to provide for eliminating certain grade crossings on the line of the Baltimore and Potomac Railway Company in the city of Washington, D. C., and requiring said company to depress and elevate its tracks, and to enable it to relocate parts of its railroad therein, and for other purposes," approved February 12, 1901;

H. R. 16927. An act for the relief of Lieut. Commander Kenneth McAlpine;

H. R. 17297. An act authorizing the extension of New York avenue from its present terminus near Fourth street NE. to the Bladensburg road;

H. R. 17344. An act for the relief of Frederick Daubert;

H. R. 19095. An act authorizing the Secretary of the Interior to sell isolated tracts of land within the Nez Perces Indian Reservation;

H. R. 19839. An act for the relief of W. H. Blurock;

H. R. 19893. An act for the relief of Thomas J. Shocker;

H. R. 23711. An act to build a bridge across the Santee River, South Carolina; and

H. R. 26062. An act authorizing the creation of a land district in the State of South Dakota, to be known as the "Bellefourche land district."

#### PETITIONS AND MEMORIALS.

Mr. BURROWS presented petitions of sundry citizens of Alto, Orange, Vandalia, Allegan, Ludington, Clare, and of Cass County, all in the State of Michigan, praying for the passage of the so-called "rural parcels post" and "postal savings banks" bills, which were referred to the Committee on Post-Offices and Post-Roads.

He also presented a petition of the Casco Pomological Society, of South Haven, Mich., praying for the enactment of legislation to prohibit the manufacture, sale, or transportation, or misbranding insecticides and fungicides, which was ordered to lie on the table.

He also presented a petition of the Michigan Chapter, American Institute of Architects, of the State of Michigan, praying for the enactment of legislation to establish a national council of the fine arts, which was referred to the Committee on the Library.

He also presented a memorial of the Michigan Chapter, American Institute of Architects, of the State of Michigan, remonstrating against the enactment of legislation to purchase land in the vicinity of the Union Station to be used as a site for a memorial to Abraham Lincoln, which was referred to the Committee on the Library.

He also presented memorials of sundry citizens of Detroit, Mich., remonstrating against the enactment of any legislation inimical to the railroad interests of the country, which were referred to the Committee on Interstate Commerce.

He also presented a petition of the common council of Cheboygan, Mich., praying for the enactment of legislation providing for the improvement of the locks located in the Cheboygan River, at the Cheboygan Paper Company's plant at that city, which was referred to the Committee on Commerce.

He also presented a memorial of the Michigan Branch of the Alumnae Association of the Georgetown Academy of the Visitation, of Detroit, Mich., remonstrating against the enactment of legislation providing for the opening of public streets through the grounds of the Sisters of the Visitation Convent at Georgetown, D. C., which was referred to the Committee on the District of Columbia.

Mr. FULTON presented a joint memorial of the legislature of Oregon, which was referred to the Committee on Agriculture and Forestry and ordered to be printed in the Record, as follows:

#### House joint memorial 6.

Whereas the growing and shipping of apples is an important industry in the State of Oregon, such that the Oregon apple ranks first for excellence in the markets of the world; and

Whereas the fruit growers of the States of Oregon, Washington, Idaho, Montana, Utah, and British Columbia have adopted two uniform sizes of apple boxes, known as the "standard" and "special" apple boxes, containing 2,173.5 cubic inches and 2,200 cubic inches, respectively, each of these boxes containing a bushel according to United States standard; and

Whereas there is now in the Congress of the United States a bill known as the "Porter bill," which attempts to fix the standard for a box of apples at 2,564 cubic inches, to the detriment and injury of the apple growers of the Northwestern States, who now ship more boxed apples than all other States combined: Therefore be it

Resolved by the house (the senate concurring), That the legislative assembly of the State of Oregon request our Senators and Representatives in Congress to use their best efforts to defeat the bill known as the "Porter bill;" and be it further

Resolved, That the chief clerk of the house be instructed to send a copy of this resolution to each Senator and Representative in Congress from Oregon.

#### UNITED STATES OF AMERICA, STATE OF OREGON, Twenty-fifth legislative assembly, hall of representatives:

I, W. F. Drager, do hereby certify that I have carefully compared the annexed copy of house joint memorial No. 6 with the original thereof, adopted by the house January 22, 1909, and concurred in by the senate January 26, 1909, together with the indorsements thereon; and that it is a full, true, and complete transcript therefrom and of the whole thereof.

In testimony whereof I have hereunto set my hand at the capitol, at Salem, Oreg., this 27th day of January, A. D. 1909.

W. F. DRAGER,  
Chief Clerk.

Mr. FULTON presented petitions of sundry citizens of Montavilla Oreg., praying for the passage of the so-called "rural parcels-post" and "postal savings banks" bills, which were referred to the Committee on Post-Offices and Post-Roads.

Mr. GALLINGER presented the petition of Alfred Shaw, of Washington, D. C., and a petition of the congregation of the Western Presbyterian Church, of Washington, D. C., praying for the enactment of legislation amending the present laws regulating the sale of intoxicating liquors in the District of Columbia, which were referred to the Committee on the District of Columbia.

Mr. BLUKELEY presented a petition of sundry citizens of Orange, Conn., praying for the passage of the so-called "rural parcels-post" and "postal savings banks" bills, which was referred to the Committee on Post-Offices and Post-Roads.

Mr. DANIEL presented a petition of the Chamber of Commerce of Newport News, Va., praying for the enactment of legislation providing for placing and maintaining four acetylene gas buoys at the channel across the Newport News Middle Ground, in that State, which was referred to the Committee on Commerce.

Mr. ANKENY presented a joint memorial of the legislature of the State of Washington, which was referred to the Committee on Military Affairs and ordered to be printed in the Record, as follows:

#### Senate joint memorial 3. By Senator Blair.

To His Excellency Theodore Roosevelt, President of the United States of America, to the honorable Secretary of War, and to the honorable Senators and Representatives from the State of Washington:

Your memorialists, the senate and house of representatives of the State of Washington, in legislative session assembled (eleventh regular session, respectfully petition as follows:

That lots 2 and 3 in section 12, township 35 north, of range 3 west, of the Willamette meridian, and lots 4 and 5 in section 11, township 35 north, of range 3 west, of the Willamette meridian, now held by the War Department as a portion of a military reserve on San Juan Island, State of Washington, be donated to the state university of the State of Washington, for a site on which to erect buildings for a biological school to be used in conjunction with said university.

Passed by the senate January 11, 1909.

M. E. HUY,  
President of the Senate.

Passed by the house January —, 1909.

LEO O. MEIGS,  
Speaker of the House.

Mr. ANKENY presented a petition of the legislature of the State of Washington, praying that an appropriation of \$1,000,000 be made for the construction of wagon roads in the Territory of Alaska, which was referred to the Committee on Territories.

He also presented a memorial of the legislature of the State of Washington, remonstrating against the removal of the duty on forest products, which was referred to the Committee on Finance.

He also presented a petition of the legislature of the State of Washington, praying for the removal of the duty on jute and grain bags, which was referred to the Committee on Finance.

He also presented a petition of Mountain View Grange, No. 93, Patrons of Husbandry, of White Salmon, Wash., praying for the passage of the so-called "rural parcels-post" and "postal savings banks" bills, which was referred to the Committee on Post-Offices and Post-Roads.

Mr. KNOX presented a memorial of the Pennsylvania Peace Society, of Philadelphia, Pa., remonstrating against any further appropriation being made to increase the navy, which was referred to the Committee on Naval Affairs.

He also presented a petition of the Federation of Jewish Organizations of New York City, N. Y., praying for the enactment of legislation to create the office of Jewish chaplain in the army and navy, which was referred to the Committee on Military Affairs.

He also presented a petition of sundry citizens of Mount Carmel, Pa., praying for the enactment of legislation to prohibit the manufacture of and importation of opium into the United States, except for medicinal purposes, which was ordered to lie on the table.

He also presented sundry petitions of citizens of western Pennsylvania, praying for the enactment of legislation granting pensions to the surviving members of the United States Military



Telegraph Corps who served in the civil war, which were referred to the Committee on Pensions.

He also presented a petition of Local Lodge No. 124, Independent Order of Odd Fellows, of Gettysburg, Pa., praying for the enactment of legislation providing for the construction of a Lincoln memorial highway from the city of Washington to the battlefield at Gettysburg, in that State, which was ordered to lie on the table.

He also presented a petition of the temperance committee of the General Assembly of the Presbyterian Church of the United States, of Pittsburg, Pa., praying for the enactment of legislation to prohibit the liquor traffic in the Hawaiian Islands, which was referred to the Committee on Pacific Islands and Porto Rico.

He also presented memorials of D. G. Stewart & Geidel, of Pittsburg; George M. Warner, of Philadelphia; L. G. Graff & Sons, of Philadelphia; James L. King, of West Chester; and of the Commercial Exchange of Philadelphia, all in the State of Pennsylvania, remonstrating against the passage of the so-called "McCumber bill," providing for the federal inspection of grain, which were ordered to lie on the table.

He also presented petitions of the American Prison Association, of Chicago, Ill.; the Prison Association, of New York; of Prof. H. R. Mussey, of Philadelphia, Pa.; and S. E. Gill, of Pittsburg, Pa., praying for the enactment of legislation providing for an appropriation of \$50,000 for the reception of the International Prison Congress to meet in Washington, D. C., in 1910, which were referred to the Committee on Appropriations.

He also presented petitions of the Board of Trade of Scranton; of the Allegheny County Bar Association, of Pittsburg; of F. G. Moorhead, of Beaver; the Bar Association of Berks County; and the Dauphin County Bar Association, all in the State of Pennsylvania, praying for the enactment of legislation providing for an increase in the salaries of the judges of the circuit and district courts of the United States, which were ordered to lie on the table.

He also presented memorials of the Department of Pennsylvania, Grand Army of the Republic, of Philadelphia, Pa.; the Grand Army of the Republic, of Red Bank, N. J.; and of H. F. Madgeburg, Milwaukee, Wis., remonstrating against the abolition of the local pension agencies throughout the country, which were referred to the Committee on Pensions.

He also presented petitions of Puget Sound Harbor, No. 16, American Association of Masters, Mates, and Pilots, of Seattle, Wash.; of Galveston Harbor, No. 20, American Association of Masters, Mates, and Pilots, of Galveston, Tex.; and of California Harbor, No. 15, American Association of Masters, Mates, and Pilots, of San Francisco, Cal., praying for the passage of the so-called "Knox bill," concerning licensed officers of steam and sail vessels, which were referred to the Committee on Commerce.

#### REPORTS OF COMMITTEES.

Mr. FRYE, from the Committee on Foreign Relations, reported an amendment proposing to appropriate \$200,000 to enable the United States fittingly to participate in the Universal and International Exhibition to be held at Brussels, Belgium, from April to November, 1910, intended to be proposed to the sundry civil appropriation bill, and moved that it be printed and, with the accompanying message from the President of the United States, referred to the Committee on Appropriations, which was agreed to.

Mr. CULLOM, from the Committee on Foreign Relations, to whom was referred the amendment submitted by himself on the 29th ultimo, proposing to appropriate \$2,839.79 for the annual share of the United States for the maintenance of the International Sanitary Bureau for the year 1910, intended to be proposed to the diplomatic and consular appropriation bill, reported favorably thereon, and moved that it be referred to the Committee on Appropriations and printed, which was agreed to.

Mr. HALE, from the Committee on Appropriations, to whom was referred Senate Document No. 653, Sixtieth Congress, second session, relative to the title of the United States to lands in the District of Columbia, asked to be discharged from its further consideration and that it be referred to the Committee on the District of Columbia, which was agreed to.

Mr. CURTIS, from the Committee on Pensions, to whom was referred the bill (H. R. 24831) granting pensions and increase of pensions to certain soldiers and sailors of the civil war and certain widows and dependent relatives of such soldiers and sailors, reported it with amendments and submitted a report (No. 904) thereon.

Mr. SCOTT, from the Committee on Pensions, to whom was referred the bill (H. R. 25391) granting pensions and increase

of pensions to certain soldiers and sailors of the civil war and certain widows and dependent relatives of such soldiers and sailors, reported it with amendments and submitted a report (No. 905) thereon.

Mr. McCUMBER, from the Committee on Pensions, to whom were referred certain bills granting pensions and increase of pensions, submitted a report (No. 906), accompanied by a bill (S. 9067) to grant pensions and increase of pensions to certain soldiers and sailors of the civil war and to certain widows and dependent relatives of said soldiers, which was read twice by its title, the bill being a substitute for the following Senate bills heretofore referred to that committee:

S. 575. Simeon F. Dickinson;  
S. 1242. Elmira S. Tupper;  
S. 1282. William J. Irvine;  
S. 1297. John Reed;  
S. 1303. Richard H. Tombaugh;  
S. 1415. Louis N. Lafontisee;  
S. 1603. Samuel P. Leith;  
S. 1947. Herman J. Wall;  
S. 2433. John Frazer;  
S. 2491. John S. Hall;  
S. 2557. Malinda Wood;  
S. 2967. Benjamin F. Martz;  
S. 3055. William Crawford;  
S. 3058. Girden C. Day;  
S. 3290. John A. Wier;  
S. 3297. Thomas H. Wells;  
S. 3309. Conrad Seim;  
S. 3317. Alfred R. Babb;  
S. 3333. William A. Plantz;  
S. 3565. George W. Parsons;  
S. 3772. Joseph B. Graham;  
S. 4246. Robert W. Pool;  
S. 4419. Hezekiah Allen;  
S. 4531. Charles Muller;  
S. 4551. Peter J. Coughlin;  
S. 4625. Mary A. Wampler;  
S. 4705. John A. Gibson;  
S. 4918. George W. Morton;  
S. 5044. Bernard W. Fisher;  
S. 5205. Richard S. Harrison;  
S. 5364. Maberry Riggs;  
S. 5563. Martha S. Taylor;  
S. 5610. Cynthia L. Allen;  
S. 6094. Mary E. Williams;  
S. 6273. Sarah A. Conner;  
S. 6527. Daniel Martin;  
S. 6681. Samuel Campman;  
S. 6836. James F. Spencer;  
S. 6888. William W. Graves;  
S. 7037. Francis Hale;  
S. 7039. Anna H. Scofield;  
S. 7067. William W. Darrow;  
S. 7079. Rowena C. Lummis;  
S. 7089. William H. Nichols;  
S. 7165. Edward A. Wyman;  
S. 7281. Elizabeth A. Nye;  
S. 7296. John L. Rushton;  
S. 7319. Charles Dalle;  
S. 7420. James B. Herron;  
S. 7422. Oscar Perkins;  
S. 7424. Ira H. Thurber;  
S. 7443. Barney B. Mattimore;  
S. 7445. Daniel A. Grosvenor;  
S. 7497. Hiram Dice;  
S. 7498. Joseph H. Owen;  
S. 7506. Charles F. Chapman;  
S. 7509. William Oscar Ward;  
S. 7519. Jacob Hill;  
S. 7524. Dilazon D. Holdridge;  
S. 7574. Eva A. Blanchard;  
S. 7628. Abram Rhinehart;  
S. 7676. Wales W. Wood;  
S. 7684. John Wickham;  
S. 7701. James A. Light;  
S. 7794. Henry E. Steele;  
S. 7834. Rodham Miller;  
S. 7934. Amasa Smith;  
S. 7980. Michael Archer;  
S. 8004. Wallace A. McKinstry;  
S. 8064. George Lashus;  
S. 8080. Lewis Roberts;  
S. 8084. John Donnelly;

S. 8159. James W. Bedford;  
 S. 8164. Henry Deuble;  
 S. 8202. Moses Bradford;  
 S. 8216. Cerelle Shattuck;  
 S. 8377. Emma C. Orr;  
 S. 8388. Francis M. Brannon;  
 S. 8415. William J. Ludley;  
 S. 8444. Miranda A. Wheelock;  
 S. 8451. Edward H. Richards;  
 S. 8470. George E. Wilkinson;  
 S. 8507. Martin V. Briggs;  
 S. 8570. Alexander S. Stewart;  
 S. 8528. John Farrell;  
 S. 8594. James H. Tilman;  
 S. 8623. John Monett;  
 S. 8625. William O'Brien;  
 S. 8700. Nathan Dodge;  
 S. 8796. Frank G. Treash;  
 S. 8801. Charles G. Allen;  
 S. 8809. Margaret E. Colby;  
 S. 8810. John E. Rogers;  
 S. 8811. Charles H. Wells; and  
 S. 8828. Sylvia Housiaux.

Mr. HEYBURN, from the Committee on Public Lands, to whom was referred the bill (S. 8822) providing for the relinquishment by the United States of certain lands to the county of Kootenai, in the State of Idaho, reported it without amendment and submitted a report (No. 907) thereon.

Mr. MARTIN, from the Committee on Claims, to whom was referred the bill (H. R. 17276) for the relief of S. R. Hurley, reported it without amendment.

Mr. SMITH of Michigan, from the Committee on Commerce, to whom was referred Senate concurrent resolution 80, submitted by himself on January 27, providing for a preliminary survey of the harbor at Lexington, Sanilac County, Mich., reported it without amendment.

#### RETIREMENT OF CERTAIN ARMY OFFICERS.

Mr. WARREN. From the Committee on Military Affairs I report back with an amendment the bill (S. 8906) to provide for the retirement of certain officers on the active list of the Regular Army who have been passed over in promotion by officers junior to them in length of commissioned service, and I submit a report thereon. I ask for the present consideration of the bill.

The VICE-PRESIDENT. The bill will be read for the information of the Senate.

The SECRETARY. The Committee on Military Affairs report to strike out all after the enacting clause and to insert:

That hereafter when an officer of the line of the Regular Army, whose original commission in the army is dated prior to October 1, 1890, and who has been passed over by his juniors in length of commissioned service in the same branch of the line, is retired under existing law, he shall be retired with the rank and pay of the grade which he would have attained if promotion in the several grades from second lieutenant to colonel, inclusive, had been carried out lineally and by seniority in the several branches of the line prior to the act of Congress approved October 1, 1890, regulating promotions: *Provided*, That nothing herein contained shall be construed to mitigate or remove loss of rank which any officer may have suffered by sentence of court-martial, action of examining board, or voluntary transfer: *And provided further*, That nothing herein contained shall be construed to deprive any officer upon retirement of the rank he now holds, to which he may attain at any future time, or to which he may be entitled by law upon retirement.

Mr. CULBERSON. Before consent is given for the consideration of the bill I should be glad if the Senator in charge of it would explain it.

Mr. WARREN. I think it will take but a moment.

There has been a cause of friction for some years in the army. It came about from changes in the law. For many years promotion was regimental up to the grade of captain. In 1874, and again in 1890, the law was changed. Still later, in 1898, lineal promotion was provided for in each arm of the service all through the army up to and including the grade of colonel. These changes in the law affected some 200 or 250 officers. There have been bills before us for our consideration for many years, in the Senate Committee on Military Affairs, undertaking to regulate the rank of all those who suffered by changes in the law. But naturally there is much opposition to lowering in any way the rank and pay of officers who have been raised, even though through unjust or erroneous legislation, or to passing officers of lower rank over those of a higher rank, even to correct error.

Finally, it is the opinion of the committee that by this proposed law, which applies only to 20 officers and applies only then after their retirement, the acute situation is rendered more acceptable to a large class, and it ought to be to all, in that while it does not change the situation as to rank and pay of

officers while in active service, it does provide that when an officer reaches the time of retirement he may be retired at the same grade he would have attained if he had been properly promoted up to that time.

It will apply to 9 cavalry officers and to 11 infantry officers, none of whom will be raised at retirement more than one grade, with one exception, where an officer will be raised two grades; that is to say, he will be raised from major to colonel when he retires. The others will go from lieutenant-colonel to colonel.

Mr. CULBERSON. Is the bill reported unanimously from the Committee on Military Affairs?

Mr. WARREN. It is.

Mr. HALE. Mr. President—

The VICE-PRESIDENT. Does the Senator from Wyoming yield to the Senator from Maine?

Mr. WARREN. Certainly.

Mr. HALE. As the Senator knows, our experience with statutes of this kind, passed without discussion, has shown that very important and extensive results come from bills touching the pay of both the army and the navy upon the active and retired lists. I have great confidence in the investigation the Senator from Wyoming would make in any matter of this kind, but we must consider what has been our experience in the past. I know I have found that in the case of bills affecting the pay, rank, and promotion of officers in the navy by a simple bill supposed to affect but very few we have afterwards learned that in operation it affects a great many.

Is the Senator from Wyoming in charge of this bill absolutely certain not only as to the facts and the merits of the officers who will be affected, but that those who will be advanced and their pay increased by the bill are only in number the few whom he has stated? Is the Senator absolutely certain that the bill will not be found to affect a larger number—classes—in the army, and that we shall not discover and he will not discover that it is much wider and more far-reaching than either we should contemplate or he would desire?

As I have said, I have learned to be very careful about bills that change the grade and rank and pay of a few officers. A good many men get in under such a bill afterwards. Has the Senator, if it is necessary, so guarded his bill that no "back pay," as we call it—no increase of pay, no advanced pay—will be claimed by the beneficiaries of the bill under its provisions?

Mr. WARREN. Mr. President, I realize fully the wisdom and pertinence of the inquiry of the Senator from Maine. We are all liable to be mistaken; but I will say to the Senator and to the Senate that this matter has been studied over more, perhaps, than any other in regard to the army or army pay. It has been under agitation for a number of years. The present Secretary of War and his two predecessors have had it under consideration. It has been referred to the staff for a working out as to how it would apply generally. It was first considered along the lines of reorganizing the entire promotion plan, taking every officer who was affected—some two hundred and odd—and putting all of them, as fast as changes could be made, in the places which they would have attained by application of the straight plan of general lineal promotion. But, naturally, owing to the opposition of those who have gained by the other method of promotion, the difficulty in deciding, and the very danger the Senator from Maine speaks of, that mistakes might be made and those for whom the legislation was not intended might make claims under it, it was finally decided to offer restitution only at retirement, and not before, to those few who could never hope to reach the grade they would have attained through lineal promotion, and who at retirement would suffer the balance of their lives one grade, and in one case two grades, by reason of their having been overslaughed.

The matter has been carefully investigated by expert officers in the War Department, and the names of all officers who have made any claim, and, in fact, all of those who, under figures and dates and records, can possibly have any claim, have been tabulated. We have the tabulations in the committee room. It seems to me to have been worked out carefully and completely.

I am very willing to state that, as far as I am concerned and my investigations run, I believe the bill will provide for only 20 officers and that it can not exceed seventy-five hundred dollars a year at any time, and will be as much less than that as may be caused through deaths that may occur in the meantime.

Mr. HALE. I did not hear the Senator's last statement.

Mr. WARREN. I will say to the Senator and to the Senate that these 20 or 30 officers can get no benefit whatever from this legislation until their time of retirement, say, at 64 years of age. If all of them should retire at the same time and all of them should live, the additional expense to the Government would not exceed \$7,500 per annum for the time be-



tween their retirement and their death. But of course they retire at different dates and deaths may ensue, so that the total amount can never be very large. It would probably be much less than \$100,000 for all during their lifetime, as I figure it on the ordinary tables of mortality. It applies only to these 20 officers, and applies only to those who would otherwise lose at retirement.

Mr. HALE rose.

Mr. WARREN. Excuse me a moment. As to the others, it would not include the 225 or 250. They are suffering injustice to-day. They have been deprived, and they will continue to be deprived, during their active service of one or, perhaps in a few cases, of two grades which they would have enjoyed through lineal promotion. They will, under this bill, reach the same point at retirement and receive the same pay thereafter that they would have received if they had not been overslaughed.

So this applies simply to those officers whom we can not otherwise provide for unless we make an overturning which would result in the displacement of from 200 to 250 officers.

Mr. HALE. Under that statement there would, of course, be no retroactive effect.

Mr. WARREN. Not only that, but it applies only to those who were affected up to a certain date, the legislation of 1890, and it can have no effect as to promotion hereafter, because the law now, and since 1898, has provided for straight lineal promotion.

Mr. BACON. I should like to ask the Senator a question, to see if I understand this matter properly. As I understand the proposed legislation, it grows out of the fact that there has been a change in the law of promotion, and under the old law a man's promotions depended upon vacancies in his own corps.

Mr. WARREN. In his own regiment.

Mr. BACON. In his own regiment. When I said "corps," I meant in a generic sense the corps, the organization to which he belonged. I did not mean a corps of the army.

Mr. WARREN. Will the Senator allow me right there to explain one point?

Under the old law promotion was regimental up to the grade of captain, so that a second lieutenant and a first lieutenant in a regiment where there were few deaths, or none, and no resignations, might remain as second lieutenant and first lieutenant until he was perhaps 50 years or more old, while his classmate in another regiment might reach a captaincy at 30 or 35.

Mr. BACON. Under the present law the promotion is regulated—

Mr. WARREN. It is now lineal promotion all the way up from second lieutenant to colonel, inclusive.

Mr. BACON. Regardless of the particular regiment to which the officer may belong?

Mr. WARREN. Yes.

Mr. BACON. But it is limited to his arm of the service, is it not? In other words, the creation of a vacancy in the cavalry can not promote a man in the infantry?

Mr. WARREN. In a certain way, of course, up to general officers they go together in the lineal list; but it does apply to each line—cavalry, artillery, and infantry—as the Senator states.

Mr. BACON. Separately?

Mr. SCOTT. If the Senator from Wyoming will yield to me, I will say to the Senator from Georgia that he will see the injustice in many cases where officers were retarded in their promotion. By the old regimental plan of promotion a youngster would go ahead of the man who was his instructor at West Point. It is intended to cure that.

Mr. BACON. And under the change of law such irregularity or injustices, you may say, as were practically accomplished under the old law have been perpetuated in the promotions under the new law?

Mr. WARREN. Certainly.

Mr. BACON. And it is designed to correct that inequality?

Mr. WARREN. It is to correct that so far as it applies—

Mr. BACON. To the question of retirement?

Mr. WARREN. To the retirement, and to that only.

Mr. BACON. I did not catch the statement of the Senator as to the number of officers who would be included.

Mr. WARREN. There are 9 in the cavalry, 11 in the infantry, and none in the artillery, because the addition of extra regiments and additional men has corrected the inequalities in that arm sufficiently, so that at retirement time they will all reach the point they would have reached if they had gone out on the lineal list.

Mr. BACON. The question I wish to propound to the learned Senator is this: There are only a few of these officers, and those few officers are known?

Mr. WARREN. Yes.

Mr. BACON. In other words, their number can not be added to.

Mr. WARREN. No.

Mr. BACON. Would it not be well, in order to meet the suggestion of the Senator from Maine in a practical way, instead of having a general bill, to have a bill which should name those officers, as there are very few of them.

Mr. WARREN. We consider it bad legislation to legislate personally for officers by name where it can be avoided, and it is always avoided when possible.

Mr. BACON. I quite agree with the Senator.

Mr. WARREN. The report which accompanies the bill, and which I ask may go into the Record, gives the names of all of them. I think it would be bad legislation to put the names in the bill.

Mr. BACON. If the report gives the names, of course that accomplishes the same purpose.

Mr. TILLMAN. Has the report been read?

Mr. WARREN. It has not.

Mr. TILLMAN. I think those of us who have not had an opportunity to examine the bill should hear the report before we are called upon to vote on it.

Mr. BACON. I understand that the report substantially embodies what the Senator from Wyoming has stated.

Mr. WARREN. It does.

Mr. TILLMAN. If it is not very long, I should like to have it read.

Mr. WARREN. It is a report of considerable length. I ask that it be printed in the Record.

There being no objection, the report (No. 903) was ordered to be printed in the Record, as follows:

The Committee on Military Affairs, to which was referred the bill (S. 8906) to provide for the retirement of certain officers on the active list of the Regular Army who have been passed over in promotion by officers junior to them in length of commissioned service, has carefully considered the same and hereby reports it to the Senate favorably, with recommendation that it be passed amended as follows:

Strike out all after the enacting clause and insert in lieu thereof the following, which is practically the same matter in a more condensed form and in language and arrangement approved by the Judge-Advocate-General of the Army and indorsed by the Secretary of War in letter dated January 28, 1909, quoted hereafter in this report:

That hereafter when an officer of the line of the Regular Army, whose original commission in the army is dated prior to October 1, 1890, and who has been passed over by his juniors in length of commissioned service in the same branch of the line, is retired under existing law, he shall be retired with the rank and pay of the grade which he would have attained if promotion in the several grades from second lieutenant to colonel, inclusive, had been carried out lineally and by seniority in the several branches of the line prior to the act of Congress approved October 1, 1890, regulating promotions: *Provided*, That nothing herein contained shall be construed to mitigate or remove loss of rank which any officer may have suffered by sentence of court-martial, action of examining board, or voluntary transfer: *And provided further*, That nothing herein contained shall be construed to deprive any officer upon retirement of the rank he now holds, to which he may attain at any future time, or to which he may be entitled by law upon retirement.

In the early history of the army the rule established for promotion of officers was to promote captains and field officers lineally and by seniority in the arm of service to which he belonged; that is, a cavalry captain, major, or lieutenant-colonel was promoted when he became the senior of his grade in the cavalry arm, and similarly for the infantry and artillery.

A lieutenant was promoted to a captaincy when he became the senior in his regiment.

The result of this system of promotion was that in regiments where many vacancies occurred the lieutenants received rapid promotion, but in regiments where few vacancies occurred promotion was slow.

When an officer reached the grade of captain he was assured his promotion when he became the senior of his grade in his arm, but the operation of the law gave promotion from lieutenant to captain such variations that many lieutenants of regiments where promotion was rapid got their captaincy long before others who entered at the same time or before them in regiments where promotion was slow.

An examination of a page of the Army Register of the time would show captains who were commissioned as second lieutenants on the same day standing far apart. For example, take 10 captains who entered on the same day. They might stand 1, 3, 6, 10, 11, 13, 20, 27, 30, 32, and even with wider variations than this.

Frequently some officers reached the grade of major while others who entered at the same time were far down on the list of captains, and not infrequently officers found others who entered years after them commanding a battalion, regiment, or post in which the officer with the longer service served in a subordinate position.

This system always held out a chance for an officer who lost in promotion as a second lieutenant to gain as a first lieutenant all or a part of what he had lost, and he might reach his captaincy in approximately his proper place.

All appreciated that this was the law and abided by it cheerfully, trusting to luck. A regiment that had slow promotion was likely later to have rapid promotion. When the statutes were revised in 1874, whether by accident or design, section 1204, regulating promotion, was changed materially in the wording from the older statutes of 1812 and 1814.

The statute of 1812 reads:

"\* \* \* That the military establishment authorized by law previous to 12th day of April, 1808, and the additional military force raised by virtue of the act of the 12th of April, 1808, be, and the same are hereby, incorporated, and that from and after the passing of this act the promotions shall be made through the lines of artilleryists, light

artillery, dragoons, riflemen, and infantry, respectively, according to established rule."

The statute of 1814 reads:

"That from and after the passing of this act promotions may be made through the whole army in its several lines of light artillery, light dragoons, artillery, infantry, and riflemen, respectively; and that the relative rank of officers of the same grade, belonging to regiment or corps already authorized, or which may be engaged to serve for five years, or during the war, be equalized and settled by the War Department, agreeably to established rules; and that so much of the act of 1812 is hereby repealed."

Section 1204, Revised Statutes, reads:

"Promotions in the line shall be made through the whole army, in its several lines of artillery, cavalry, and infantry, respectively."

The permissive "may" was replaced by "shall," and "according to established rule" was omitted.

Immediately following the adoption of the Revised Statutes, lieutenants began to protest that they were not receiving promotion in accordance with law, and that they were entitled to promotion by seniority and lineally in the arm and not in a particular regiment. The War Department, however, continued to promote them regimentally, and Army Regulations continued to provide regimental promotion. Frequent efforts were made to obtain promotion lineally, but without success.

These protests, and the hope of making promotion more equitable, led Congress, in October, 1890, to enact a law providing for lineal promotion in all grades, except first lieutenants, thinking that by leaving the grade of first lieutenant to be promoted according to existing law, the officers of this grade would even up somewhat. This was changed, in 1898, to apply to all grades from second lieutenant to colonel. This law established an equitable method for all officers then in the service in the grade of second lieutenant who had not been passed over by juniors, and for all officers entering thereafter; but since it placed all officers of each arm on a lineal list as they then stood, with the inequalities to that date, those who had been passed over by juniors became permanently fixed in the position and so remain to-day.

Several efforts were made to procure legislation which would adjust officers' rank according to length of service, and in 1892 such a bill (H. R. 328, 52d Cong.) passed the House of Representatives without opposition. The Senate committee reported the bill favorably with amendments, and as amended it passed the Senate; but the House disagreed to the amendments, conferees were appointed by both Houses, and the bill died in conference. The Senate amendments, which defeated the bill, were made because of the fact that there were many officers in the Regular Army who had received higher commissions than length of service would justify, on account of distinguished service in the Volunteer Army during the war of the rebellion, and the proposed adjustment could not be made without injustice to such officers.

The matter was then allowed to rest until 1907, when it was taken up again. Those who advocated the adjustment showed that the volunteers who would formerly have been affected had all either retired or reached a grade not subject to adjustment. The Chief of Staff caused an exhaustive history of promotion to be prepared, gave all the features of the proposed adjustment and all the arguments for and against it that had been submitted, and transmitted the record to the Secretary of War, who forwarded it April 1, 1908, to the Military Committees of Senate and House when returned to them, respectively, copies of bills S. 159 and H. R. 16502, Sixtieth Congress, which had been referred to him for report, and strongly recommended legislation to bring about the adjustment of rank.

These committees have not submitted reports upon the adjustment bills. It is questionable whether any legislation should be undertaken which would so completely upset the existing conditions, since there are about 250 officers affected—about 150 who have fallen behind and about 100 who have gone ahead.

But it is manifest that something should be done to give to those officers who have been so seriously passed over by their juniors in length of service and years that they will be retired for age with a lower grade than their companions of equal service, equal merit, and equal conditions.

The officers affected are few in number. About 9 in the cavalry and 11 in the infantry, who have been so left behind that they can not reach the grade which they would have attained if the laws for promotion prior to the act of October 1, 1890, had been the same as now, or which they would have reached if adjusted when the lineal act of October 1, 1890, was passed, or if adjusted now. If those officers who have gained over their less fortunate comrades had made the gain by any superior merit, or more arduous service in war, there would be reason for declining to give them relief, but a careful study of the records of officers and regiments shows no such reason.

In fact, some of the officers for whom relief is asked have rendered most efficient service, and all have excellent records. Certainly relief should be afforded them.

It is not quite seen how this can be done by adjustment of rank, nor how they can be benefited while on the active list, but they can without injury to anyone be allowed to retire with the grade to which their length of service entitles them, and on a par with their comrades, and with a grade commensurate with long and faithful service.

The operation of the bill will be as follows:

The War Department will prepare separate lists of officers of cavalry and infantry, arranged according to length of service. Owing to the recent increase of the artillery, all officers will reach the grade of colonel before retirement. The item does not apply to staff officers. When an officer is to retire under existing law, a comparison of this list with the officer's position on the Army Register will be made, and if he would have stood higher on the length of service list, he will be retired with that grade, provided he has not been reduced by a court-martial or examining board.

Any officer who will reach his grade of colonel naturally will desire to reach it on the active list, but there are a few who can not reach this grade, but who would have reached it if promotion had been equal for all. Officers will continue to clamor for the places to which they think they are entitled. This will give it to them when retired. An examination of the present army lineal list of officers will illustrate some of the glaring injustices and inequalities due to regimental promotion:

Major Bishop, cavalry, graduated in 1873; he stands behind Colonels Rodgers of 1875 and Dodd and Parker of 1876, and behind 16 lieutenant-colonels of cavalry who entered, 2 in 1873, 1 in 1875, 4 in 1876, 5 in 1877, and 3 in 1879.

Captain Scott, of cavalry, entered in 1880; he is behind 24 majors of cavalry who entered, 4 in 1880, 7 in 1881, 6 in 1882, and 7 in 1883.

Major Lassiter, of the infantry, who entered in 1873, is behind 14

colonels of infantry who entered in 1874, 1875, 1876, 1877, and 1879, and 33 lieutenant-colonels of infantry who entered from 1874 to 1880, and 4 majors of infantry, all of whom entered the service after him.

Others could be cited.

Some officers have been passed over by only 1 or 2 juniors, and this number is graded up to as high as 30 to 45. Of course the great majority can and will reach a colonelcy before retirement, but a few have been passed over by so many younger men that they can not get beyond the grade of lieutenant-colonel, and some the grade of major. These are the ones to whom it is desired to give justice.

As stated above in remarks about the adjustment bills, the number of officers who have been affected by regimental promotion number about 250. They have been passed over by their juniors in numbers varying from 1 to 50. But there are only 20 officers—9 in the cavalry and 11 in the infantry—who have been so seriously passed over that they can never reach the grade which they would have attained if promotion had been lineal since their entry into the service.

The excess of pay—that is, the actual additional cost to the Government provided all these 20 officers should be placed upon the retired list at once—would be not exceeding \$7,500 per annum; but as their dates of retirement are distributed through numerous years, this maximum amount will, in all probability, never be reached at any one time.

The maximum pay of the grades affected are:

	Colonel.	Lieutenant-colonel.	Major.
Active pay.....	\$5,000	\$4,500	\$4,000
Retired pay.....	3,750	3,375	3,000

It is thus seen that the active pay of a major is more than the retired pay of either a lieutenant-colonel or a colonel.

The following list shows the effect regimental promotion had upon the officers named, indicating the grade they would have attained before retirement had promotion by seniority in each arm of the line obtained prior to October 1, 1890, and the grade in which they must retire under existing conditions unless relief is afforded by legislation:

*Cavalry (16 colonels, 17 lieutenant-colonels).*

Name.	Number of officers, senior and younger, arranged by length of service in arm.	Would retire as—	Number of officers, senior and younger, as now arranged for promotion.	Will retire as—
1. Major Bishop.....	5	Colonel.....	22	Lieutenant-colonel.
2. Major Wheeler.....	19	Lieutenant-colonel.	34	Major.
3. Major Sicker.....	3	Colonel.....	18	Lieutenant-colonel.
4. Major Foster.....	9	do.....	23	Do.
5. Major Bremer.....	4	do.....	21	Do.
6. Major Macomb.....	10	do.....	21	Do.
7. Captain Scott.....	13	do.....	34	Major.
8. Captain Tate.....	11	do.....	31	Lieutenant-colonel.
9. Captain Goode.....	20	Lieutenant-colonel.	39	Major.

*Infantry (30 colonels, 34 lieutenant-colonels).*

1. Lieutenant-Colonel Cecil.....	14	Colonel.....	45	Lieutenant-colonel.
2. Lieutenant-Colonel Jackson.....	26	do.....	39	Do.
3. Major Lassiter.....	6	do.....	50	Do.
4. Major Clark, W. O.....	19	do.....	34	Do.
5. Major Chynoweth.....	14	do.....	41	Do.
6. Major Kerby.....	28	do.....	61	Do.
7. Major Howe.....	18	do.....	42	Do.
8. Major Rowan.....	18	do.....	33	Do.
9. Major Cotter.....	22	do.....	35	Do.
10. Major Perkins.....	30	do.....	37	Do.
11. Major Arrasmith.....	61	Lieutenant-colonel.	68	Major.

The following letter states the Secretary of War's views favorable to the proposed legislation. The draft of the bill to which he refers is identical with the bill as amended, which your committee now reports:

WAR DEPARTMENT,  
Washington, January 28, 1909.

DEAR MR. SENATOR: I have the honor to inclose a draft of a proposed bill to authorize officers who have been passed over in promotion by their juniors in length of service to retire with the grade which they would have attained if promotion of lieutenants had been lineal and by seniority prior to October, 1890, when a law was enacted changing their promotion from regimental to lineal.

The question of readjustment of the rank of officers, due to the inequalities in promotion under the regimental system, has been a vexing one for some years.

Last winter the Chief of Staff, under the direction of the Secretary of War, prepared an exhaustive report, giving the history of promotion in the army and showing the inequalities in promotion of officers of equal service and merit. The then Secretary of War (Hon. W. H. Taft), in returning to the chairman of the Military Committees of both



Houses bills looking to the adjustment of rank in the army, strongly urged legislation to effect the adjustment. Realizing that it is difficult to enact legislation for this adjustment, when there are opposing factions among the officers concerned, it is believed that legislation in the form here set forth will give some relief to those officers most seriously hurt in promotion, not while on the active list, but it will enable them to retire with the grade they should, as a matter of equity, have received while on the active list, and with pay on the retired list equal to that of others whose services, merits, etc., were practically the same, but who enjoyed higher rank and pay for many years on the active list. There are but few officers of cavalry and infantry who can not reach the grade before retirement to which their length of service entitles them.

The recent increase in the artillery will enable all officers who were passed over in promotion by their juniors to reach the grade of colonel before retirement.

The provisions of this proposed bill, if embodied as an amendment to the appropriation bill would require no separate appropriation, as the usual appropriation for pay of the army would cover the few cases of retirement under its provisions from time to time, in view of the many and increasing number of deaths of officers now on the retired list.

This seems a just and equitable measure and meets with my approval.

Very respectfully,

LUKE E. WRIGHT,  
Secretary of War.

The Hon. FRANCIS E. WARREN,  
Chairman Committee on Military Affairs,  
United States Senate.

The VICE-PRESIDENT. Is there objection to the present consideration of the bill reported by the Senator from Wyoming?

There being no objection, the bill was considered as in Committee of the Whole.

The VICE-PRESIDENT. The question is on agreeing to the amendment of the Committee on Military Affairs, which has been read.

The amendment was agreed to.

The bill was reported to the Senate as amended, and the amendment was concurred in.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

#### IMPROVEMENT OF ANACORTES HARBOR, WASHINGTON.

Mr. PILES, from the Committee on Commerce, to whom was referred Senate concurrent resolution 85, submitted by himself yesterday, reported it without amendment, and it was considered by unanimous consent and agreed to, as follows:

*Resolved by the Senate (the House of Representatives concurring), That the Secretary of War be, and he is hereby, directed to cause a survey to be made of the harbor at Anacortes, Wash., to determine the cost and advisability of its improvement.*

#### BILLS INTRODUCED.

Mr. GALLINGER introduced a bill (S. 9068) granting a pension to Abby A. Thompson, which was read twice by its title and referred to the Committee on Pensions.

Mr. TELLER introduced a bill (S. 9069) for the relief of the estates of Jesse M. Blue and David Blue, which was read twice by its title and referred to the Committee on Claims.

Mr. OWEN introduced a bill (S. 9070) providing for the removal of the restrictions from Indian lands, and for other purposes, which was read twice by its title and referred to the Committee on Indian Affairs.

Mr. STONE introduced a bill (S. 9071) for the relief of the heirs of John Ruedi, deceased, which was read twice by its title and referred to the Committee on Claims.

Mr. BANKHEAD introduced the following bills, which were severally read twice by their titles and referred to the Committee on Claims:

A bill (S. 9072) for the relief of the estate of Samuel L. Gilbert, deceased;

A bill (S. 9073) for the relief of the estate of Andrew Reece;

A bill (S. 9074) for the relief of J. W. Murry, sr.;

A bill (S. 9075) for the relief of the estate of James L. Romine, deceased;

A bill (S. 9076) for the relief of heirs of H. O. Kilpatrick, deceased;

A bill (S. 9077) for the relief of James Barron;

A bill (S. 9078) for the relief of the heirs of Leonard Daniel, deceased; and

A bill (S. 9079) for the relief of Belson Wiley Owens.

Mr. PILES introduced a bill (S. 9080) to amend "An act making appropriations for sundry civil expenses of the Government for the fiscal year ending June 30, 1909, and for other purposes," approved May 27, 1908, which was read twice by its title and referred to the Select Committee on Industrial Expositions.

He also introduced a bill (S. 9081) granting an increase of pension to Edward Thornberry, which was read twice by its title and, with the accompanying papers, referred to the Committee on Pensions.

Mr. LONG introduced a bill (S. 9082) granting an increase of pension to John L. Brady, which was read twice by its title and referred to the Committee on Pensions.

Mr. RICHARDSON introduced a bill (S. 9083) granting a pension to Sarah J. Vaughan, which was read twice by its title and referred to the Committee on Pensions.

Mr. BRANDEGEE introduced the following bills, which were severally read twice by their titles and referred to the Committee on Pensions:

A bill (S. 9084) granting an increase of pension to George W. Rowley; and

A bill (S. 9085) granting an increase of pension to John C. Bushnell.

Mr. BURKETT introduced a bill (S. 9086) granting an increase of pension to Silas M. Clark, which was read twice by its title and referred to the Committee on Pensions.

Mr. CARTER (by request) introduced a bill (S. 9087) granting an increase of pension to Lizzie Lynch, which was read twice by its title and referred to the Committee on Pensions.

Mr. DANIEL introduced the following bills, which were severally read twice by their titles and referred to the Committee on Claims:

A bill (S. 9088) for the relief of the estate of Horace L. Kent, deceased; and

A bill (S. 9089) for the relief of the estate of William L. Hollis, deceased.

Mr. FOSTER introduced the following bills, which were severally read twice by their titles and referred to the Committee on Claims:

A bill (S. 9090) for the relief of the heirs of Joseph L. Bernard and Anna Holmes Bernard;

A bill (S. 9091) for the relief of the estate of Patrick Dooling, deceased; and

A bill (S. 9092) for the relief of the Hibernia Bank and Trust Company, of New Orleans, La., successor to the Union Bank of Louisiana.

Mr. PAYNTER (by request) introduced a bill (S. 9093) for the relief of Francis Geenty, which was read twice by its title and, with the accompanying papers, referred to the Committee on Claims.

Mr. WARNER introduced a bill (S. 9094) granting a pension to John W. Toppas, which was read twice by its title and, with the accompanying papers, referred to the Committee on Pensions.

Mr. BAILEY (by request) introduced a bill (S. 9095) granting an increase of pension to John W. Ragan, which was read twice by its title and, with the accompanying papers, referred to the Committee on Pensions.

Mr. MARTIN introduced a bill (S. 9096) granting an increase of pension to Ella Palmer, which was read twice by its title and referred to the Committee on Pensions.

He also introduced the following bills, which were severally read twice by their titles and, with the accompanying papers, referred to the Committee on Claims:

A bill (S. 9097) for the relief of Tyree Brothers, of Norfolk, Va.; and

A bill (S. 9098) for the relief of James B. Clift, administrator of the estate of John Clift, of Stafford County, Va.

Mr. PENROSE introduced the following bills, which were severally read twice by their titles and referred to the Committee on Claims:

A bill (S. 9099) for the relief of the estate of Samuel Fitz, deceased; and

A bill (S. 9100) for the relief of H. J. Randolph Hemming.

He also introduced a bill (S. 9101) granting an increase of pension to Alexander Patterson, which was read twice by its title and referred to the Committee on Pensions.

He also introduced the following bills, which were severally read twice by their titles and, with the accompanying papers, referred to the Committee on Pensions:

A bill (S. 9102) granting an increase of pension to William Varian; and

A bill (S. 9103) granting an increase of pension to Robert McIntosh.

#### AMENDMENTS TO APPROPRIATION BILLS.

Mr. CULLOM submitted an amendment proposing to appropriate \$5,000 for the erection on the brink of the Grand Canyon, in the Grand Canyon Forest Reserve in Arizona, of a memorial to the late John Wesley Powell, etc., intended to be proposed by him to the sundry civil appropriation bill, which was referred to the Committee on the Library and ordered to be printed.

Mr. SMOOT submitted an amendment proposing to appropriate \$25,000 for the establishing of a fish-cultural station at some suitable point in the State of Utah, intended to be proposed by him to the sundry civil appropriation bill, which was referred to the Committee on Fisheries and ordered to be printed.

He also submitted an amendment proposing to appropriate \$5,000 to increase the limit of cost for the public building at Provo, Utah, intended to be proposed by him to the sundry civil appropriation bill, which was referred to the Committee on Public Buildings and Grounds and ordered to be printed.

Mr. OWEN submitted an amendment authorizing the Secretary of the Interior to issue a patent in fee to the Benedictine Fathers of Sacred Heart Abbey, Oklahoma, for certain lands reserved for and occupied by the Sacred Heart Mission, etc., intended to be proposed by him to the Indian appropriation bill, which was ordered to be printed and, with the accompanying paper, referred to the Committee on Indian Affairs.

Mr. HEYBURN submitted an amendment providing for the adjudication of the claims of Nells Anderson and William Winchell and others whose land or improvements have been damaged by reason of the construction of reservoirs or canals in connection with irrigating lands on the Fort Hall Indian Reservation, etc., intended to be proposed by him to the Indian appropriation bill, which was referred to the Committee on Indian Affairs and ordered to be printed.

Mr. SCOTT submitted an amendment proposing to appropriate \$8,400 to equip certain suburban school buildings in the District of Columbia with stationary chemical fire-extinguishing appliances, intended to be proposed by him to the general deficiency appropriation bill, which was referred to the Committee on Appropriations and ordered to be printed.

Mr. DIXON submitted an amendment authorizing the Secretary of the Treasury, upon requisition by the Secretary of the Interior, to advance to disbursing officers of the Government such sums as in the discretion of the Secretary of the Interior may be necessary to meet the current and contingent expenses of the work between the Office of Indian Affairs and other bureaus of the Government, etc., intended to be proposed by him to the Indian appropriation bill; which was ordered to be printed and, with the accompanying paper, referred to the Committee on Indian Affairs.

#### IMPROVEMENT OF BLAINE HARBOR, WASHINGTON.

Mr. PILES submitted the following concurrent resolution (S. C. Res. 86), which was referred to the Committee on Commerce:

*Resolved by the Senate (the House of Representatives concurring), That the Secretary of War be, and he is hereby, directed to cause a survey to be made of the harbor at Blaine, Wash., to determine the cost and advisability of its improvement.*

#### TARIFF STATISTICS.

Mr. CUMMINS. I submit a resolution and ask unanimous consent for its immediate consideration.

The resolution (S. Res. 275) was read, as follows:

*Resolved, That the Secretary of the Treasury be, and he is hereby, directed to inform the Senate as soon as practicable upon the matters following, to wit:*

First. What was the aggregate amount received by the United States as duties upon imports during the last year upon those items, articles, or commodities upon which specific duties only are imposed?

Second. What was the aggregate amount received by the United States as duties upon imports during the same period upon those items, articles, or commodities upon which an ad valorem duty is imposed, or both a specific and an ad valorem duty?

Third. What was the entire expense of administering the law at the various ports of entry during the same period, not including any part of the expense of the office of the Secretary of the Treasury at Washington?

Fourth. What was the expense during the same period of administering at the several ports of entry that part of the law which imposes ad valorem duties either partially or wholly, not including the office of the Secretary of the Treasury at Washington?

Fifth. What was the aggregate value of imports during the same period paying specific duties alone?

Sixth. What was the aggregate value of imports during the same period paying ad valorem duties either in whole or in part?

Seventh. If all import duties had been specific during the same period, to what extent would the expense of administering the law have been diminished? Be it further

*Resolved, That in construing the phrase "the last year" the Secretary of the Treasury may take any period of twelve successive calendar months ending not earlier than June 30, 1908.*

The VICE-PRESIDENT. Is there objection to the present consideration of the resolution?

Mr. HALE. It is a very extended and complicated resolution. I move that it be referred to the Committee on Finance.

The motion was agreed to.

#### SALE OF INTOXICANTS TO INDIANS.

Mr. OWEN. Mr. President, I ask for the present consideration of the bill (S. 8553) to amend section 1 of an act approved January 30, 1897, entitled "An act to prohibit the sale of intoxicating drinks to Indians, providing penalties therefor, and for other purposes."

Mr. HALE. Has morning business been concluded, Mr. President?

The VICE-PRESIDENT. Morning business has not been concluded.

Mr. HALE. Let that be concluded, Mr. President, before other business intervenes.

The VICE-PRESIDENT. The Senator from Maine demands the regular order.

#### CLERKS AND MESSENGERS TO SENATORS.

Mr. CULBERSON submitted the following resolution (S. Res. 276), which was referred to the Committee on Appropriations:

*Resolved, That on and after July 1, 1909, the Secretary of the Senate is hereby directed to pay out of the contingent fund of the Senate the sum of \$420 per annum, in equal monthly payments, to clerks to Senators not receiving more than \$1,800 per annum; and that the Secretary of the Senate is further directed to pay out of the contingent fund of the Senate the sum of \$540 per annum, in equal monthly payments, to messengers to Senators who do not now receive more than \$900 per annum, until otherwise provided by law.*

#### HOUSE BILL REFERRED.

H. R. 26915. An act making appropriation for the support of the army for the fiscal year ending June 30, 1910, was read twice by its title and referred to the Committee on Military Affairs.

#### NATIONAL CURRENCY ASSOCIATIONS.

The VICE-PRESIDENT. The morning business is closed, and the Chair lays before the Senate a resolution coming over under the rule, which will be read.

The Secretary read the resolution (S. Res. 271) submitted by Mr. CLAY on the 1st instant, as follows:

*Resolved, That the Secretary of the Treasury be, and he is hereby, directed to transmit to the Senate the names of the national currency associations formed under the act approved May 30, 1908, known as an act to amend the national banking laws, the names and location of the banks composing each association, the principal place of business of each association thus formed, the name and location of each bank belonging to any national currency association applying for an issue of additional circulating notes under the provisions of the act approved May 30, 1908, together with a list of the securities deposited for the redemption of such notes and the total amount of notes issued under this provision of law.*

Mr. CLAY. Let the resolution lie on the table, subject to my call, Mr. President.

The VICE-PRESIDENT. It will be so ordered, in the absence of objection.

#### RELATIONS BETWEEN CONGRESS AND THE EXECUTIVE DEPARTMENTS.

Mr. TELLER. Mr. President, some days ago I gave notice that I would this morning call up Senate resolution 248, for the purpose of submitting a few remarks on it. I ask that it may now be laid before the Senate.

The VICE-PRESIDENT. The Chair lays before the Senate the resolution referred to by the Senator from Colorado, which will be read.

The Secretary read Senate resolution 248, submitted by Mr. BACON January 13, 1909, as follows:

*Resolved, That any and every public document, paper, or record, or copy thereof on the files of any department of the Government relating to any subject whatever over which Congress has any grant of power, jurisdiction, or control under the Constitution, and any information relative thereto within the possession of the officers of the department, is subject to the call or inspection of the Senate for its use in the exercise of its constitutional powers and jurisdiction.*

Mr. TELLER. Mr. President, in the closing days of the session I should not feel justified in taking up the time of the Senate except upon a matter of some importance. The resolution just read, under present conditions, seems to me to be of such importance to the Senate. I do not intend to spend any great length of time over it, but I wish to call attention to the report which was read in part here the other day, made in 1886 by the Judiciary Committee of the Senate, also to call attention to the report of the Attorney-General, made in 1854, and to make some allusion to the precedents which have been established by the Senate, beginning away back in the early history of the existence of our Government.

Mr. President, I do not contend that precedents made in the Senate are binding upon the Senate as precedents made by the courts of the country are binding on those courts; but precedents have everywhere been recognized as at least of sufficient force to apply on every subject that has been discussed amongst men. A precedent derives its force and importance from those who make it, the conditions under which it was made, and the length of time which has elapsed during which it has been adhered to.

I know very well, Mr. President, that usage can not change a law. It may sometimes establish a rule of conduct, and if continued for many centuries, it becomes, perhaps, of sufficient



force to be denominated a law; but usage is certainly to be considered in the construction of the meaning of statutes.

In 1886 a controversy arose in this body, to which the Senator from Georgia [Mr. Bacon] referred the other day, and a very lengthy discussion followed the answer made by the President of the United States to a resolution of this body. I do not think that that can be cited as a case entirely like unto the present. That controversy arose because Mr. Cleveland, the then President of the United States, had removed a certain gentleman and appointed his successor. From 1867 to 1886 it had been the rule of this body when called to act on appointments made by the President under the statutes of that time to not only look into the question of the fitness of the person nominated, but also into the question of whether there were proper reasons for the removal.

I need not go into any explanation of how this question arose. Everybody who is familiar with the history of this country for the last forty-five or fifty years will be familiar with it. It arose pretty soon after the close of the civil war. It arose out of peculiar circumstances; and I am free to say that I do not believe such an act as that of 1867 could be passed now, nor do I believe it ever ought to have been passed. The controversy really between the Senate and the Executive in 1886 was, more than anything else, as to the power of removal by the Executive. The President asserted that we had no right to inquire why he had made the removal; that we should confine ourselves simply to the question of the fitness of the candidate he had nominated. The report made by the committee in that controversy has been presented to the Senate, and I desire to call attention to it very briefly. I am not going to read the report, and I am not going to spend a great deal of time over the report.

The question presented by the pending resolution I regard as one which ought to be settled, and I believe it has been settled. In 1886 I do not think there was really any controversy in the Senate as to the power of the Senate to call for information from every department of the Government, including the President himself, if we so desired. But the question was, Were the papers called for public or private papers?

Mr. President, I am willing to say that, in my judgment, there may be cases where the Senate and the other House might call for information which the Executive would be justified in withholding; but those are the exceptions. The rule may be well stated to be that the President of the United States should give to the Senate, and every head of a department should give to the Senate, the information called for, unless it can be shown to be an exceptional case, one out of the ordinary; and such is the case cited in Report 135, Forty-ninth Congress, first session, which was signed by all the members of the Judiciary Committee, either as a majority report or as views of the minority. There is really no difference of opinion between the majority and the minority, as will be observed if this report is studied, on the question of the right of the Senate to call for such information as is called for in this resolution. The controversy finally went off, upon the declaration of Mr. Cleveland, the then Executive, that the papers filed in the case which were called for specifically were papers not for the public records, but for his own private information, and that the Senate had no control over them.

The majority of the committee asserted unequivocally in their report, as they did on the floor in the debate, that there was no question of the authority of the Senate to call for information on anything within the jurisdiction of the Senate, and that anything the Senate could legislate upon or that it was necessary for the Senate to act upon was a legitimate subject of inquiry. That was as frankly admitted by the minority as it was by the majority.

The Senator from Georgia [Mr. Bacon] read from the report. I will not now take the time to read the report, as there are other matters pressing on the Senate. I will simply state the conclusions reached. The report declared, as the resolution of the Senator from Georgia [Mr. Bacon] recites, that "every public document, paper, or record, or copy thereof, on the files of any department of the Government, relating to any subject whatever over which Congress has any grant of power, jurisdiction, or control, under the Constitution, and any information relative thereto within the possession of the officers of the department, is subject to the call or inspection of the Senate for its use in the exercise of its constitutional powers and jurisdiction." This resolution is in strict conformity with the rule laid down in that report by both majority and minority.

The committee, composed of very prominent Members of this body, stated the law as is declared in this resolution. The minority of the committee stated with the greatest frankness that they did not controvert that question, but they said the

conditions then before the Senate did not fall within that rule.

Mr. Cleveland claimed that the papers called for by the Senate were private papers addressed to him, and not addressed to him in his official capacity; that they were not on the files of the Department of Justice, and were not therefore public papers, and that the Senate could not call for his reasons for removal. I am frank to say that I believe that was the law. I myself very much doubt whether the Senate has ever had the right to inquire of the President why he removed a man from office. Of course if the President should abuse his position to the extent of removing a man without proper cause, I believe it would be in the power of the impeaching body of this Government to bring the President before this body by preferring articles of impeachment, because I think it would be a crime against the public if he should abuse a discretion intrusted to him by the Constitution to make selection of public officials by a mere whim.

In the case which called forth the resolution of the Senator from Georgia, the President of the United States has, in substance, said—I have not his message before me at this moment—that we have not the right to call upon the heads of departments for information. He has not exactly followed that with the statement that I suppose he would make if cross-examined, that we were perhaps entitled to that information, but had not gone to the right source for it.

I want to digress a moment and speak concerning the heads of the departments. There are a number of departments created by law. I do not find in any of the laws creating the departments—and I have examined them all—any suggestion anywhere that their heads are to exercise the functions of advisers to the President of the United States, except perhaps in the law creating the Department of Commerce and Labor, where we specifically declared that the Secretary of that department should make certain examinations and report the result thereof to the President of the United States. I do not suppose it will be contended by anybody that because the Secretary of Commerce and Labor is required to report to the President the idea is negated that he should report to the Senate or to the other House when called upon in a proper case.

There is no provision of law constituting the head of a department a Cabinet officer. I have not found anywhere in any work on constitutional law or practice in this country any suggestion that sets apart the Secretary of the Interior or the Secretary of the Treasury or any other public official as an adviser to the President. In the early days of this Government it grew, as I understand, to be a custom—and that is all it is—for the President to have, perhaps not daily, but frequent meetings with certain heads of departments to consider public questions.

At an early day there was some controversy about this, but I can find nowhere that the President is required to consult the heads of departments, and I can find nowhere anything to indicate that because the President may consult them, they are not amenable to the law and amenable to the legislative department of the Government. I believe nobody contends—not even the President, I should judge, according to his statement—that Congress can not call on him for information.

But the present controversy does not arise in that way. I am not going to argue that Congress can call on the President for information. I suppose that will be admitted. If by a law we should say that the President should make certain reports to us, I suppose he would be compelled to make them; although I do not mean to say we could either add to or take away from any powers conferred on him under the Constitution; but, as the Constitution provides that he may voluntarily submit information to us, or he may furnish information when we request him to do so, I suppose that question need not be discussed.

The question simply is: Can one body of the National Legislature call upon any of the departments for information? Mr. President, it will not be supposed that one branch of the National Legislature would call on the President for information not required in the execution of the functions of that legislative body. We are a legislative body in connection with the House of Representatives; but we act absolutely independent of the House in exercising legislative functions, as the House acts independently of us. We negative the action of the House; the House negatives the action of the Senate. So each body does its work independently of the other, and each body is entitled to such information as will enable it to discharge its duties in a proper manner.

It has been the custom, I believe, in all legislative bodies where there are two houses, for each body to act on certain

matters independently of the other. The English House of Commons has always claimed since it has been recognized as a legislative body the right to call upon the Government for information. That right, so far as I know, has never been denied, except perhaps in the very early history of England; and nobody, so far as I can recall, ever asserted in that country that that function could only be exercised by the action of the House of Commons in connection with the House of Lords—the body known as "Parliament."

Mr. President, it would take me two or three hours to take up this question and cite the cases, beginning away back in the days of the first Presidents and following it up year after year, where the Senate of the United States has called upon the President of the United States for information and the President of the United States has replied. There are a few cases in which he did not fully reply to the inquiry; but in such cases he took it out of the rule by showing that the public interests might be injured by such a reply. We recognize that principle when we call upon the President of the United States to transmit information to us "if not incompatible with the public interest," and in practice we leave it to him to say whether such information will be incompatible with public interests. If the Senate is satisfied with that reply the matter ends there. At an early day the Senate of the United States called on the President of the United States to report to it in confidence certain facts. It was proposed to have at Panama a conference, called the "Panama conference," of all the South American Republics, in which we were to take part. The President was asked by resolution of this body to send it certain information, and the Senate added "in confidence." The President responded that he would reply in confidence, but that it must be left to the Senate itself to determine whether they would observe that confidence; that it must be left to the Senate to determine whether it would treat as confidential the papers that came to it in confidence. The Senate subsequently, after examining the papers, declared that it had a right to publish them without the consent of the President, and did so publish. This case proves that the Senate denied to the President the right to determine for the Senate what should be confidential.

I could read the correspondence in that case, but it is hardly worth while to do so at this time, because this is somewhat of an academic question anyway just now. With the change of administration before us, there may be a change of sentiment on this subject.

Mr. President, I desire to be as brief as possible; but I will call attention now to a report that was read here, in part, by the Senator from Georgia in the remarks which he submitted on this subject some days ago. First, however, I want to go back and call attention to some utterances of Caleb Cushing in an article that he submitted to the President, entitled "Office and duties of the Attorney-General," which was published in 1854, when Mr. Cushing was Attorney-General of the United States. The older Members of this body—those as old as I am—will have a very clear recollection of Caleb Cushing. Those who are familiar with history which occurred fifty or sixty years ago will also have a very clear recollection of him. That he was a great lawyer nobody ever denied. He was a man who, perhaps, was as badly criticised as any man ever in public life, and yet I believe no man assailed his integrity, and certainly no man assailed his ability. Fifty-four years ago is a good while. He then spoke of what was the law in this country and what had been the law in this country for many years, and what I assert here has been the law ever since, as can be seen by any Senator who will take the Messages and Documents, which, I presume, are in the possession of every one of us, and look over them and see the multitude of cases in which the Senate has called on the heads of departments and the President himself for information. I need not go into any argument to show that if you can call on the President of the United States for information, you certainly can call on the creature that Congress has created.

I wish to call the attention of the Senate to some statements made by Mr. Cushing. This is an opinion which I think every Senator would find useful if he would read it. We annually have read from the desk the Farewell Address of George Washington to the people of the United States. I have sometimes thought that if we would spend a little time in reading some other things the wise men have declared as to constitutional law we might get quite as much value as we can out of that able and interesting address.

Of course, Mr. President, Mr. Cushing was a state rights Democrat, but not more so than very many men who have held that office who were not members of his political organization.

He says, on page 329, volume 6, under the head of "Office and duties of Attorney-General."

In the organization of the business of this department by this act facts peculiar as compared with the other two departments are prominent.

I will stop to say that the law creating one of these departments is unlike the other; but there are some things in the act establishing the Treasury Department, it being one of the early acts creating a department, which, I think, are worthy of consideration:

One is that the Secretary of the Treasury, instead of being made subject only to the direction of the President by name, is required "generally to perform all such services, relative to the finances, as he shall be directed to perform;" which phraseology has relation to the provision of the act, that he shall "make report and give information to either branch of the Legislature, in person or writing, as he may be required, respecting all matters referred to him by the Senate or House of Representatives, or [and] which shall appertain to his office."

Mr. President, there are a few cases, and those during Washington's administration, where the head of a department has come before the Senate or House and given information. We have since adopted the other plan, of asking them to send it in writing. But there are a large number of cases, and many of them are within our own knowledge, where heads of departments have come before committees of the House or the Senate and discharged that function of giving information to the committees, and certainly, if they have recognized their responsibility in such cases, much more ought they to recognize their responsibility when the Senate or the House calls upon them for information.

Mr. President, I have marked a considerable number of points here that I desired to read, but knowing that the Senate is somewhat impatient at this time, I am going to skip them and call the attention of the Senate simply to the report and let them read it for themselves.

Speaking of the Secretary of the Interior—the Department of the Interior was created in 1849—and speaking of giving jurisdiction as to patents and general land matters, and so forth—

Mr. OVERMAN. I should like to inquire from what volume the Senator is reading?

Mr. TELLER. Volume 6 of the Opinions of the Attorney-General. By the way, I want to stop just a moment here to say—I will not read it—that Mr. Cushing goes on to state what these reports are. He says, of course they do not have the force that the opinions of courts have, but he says it has grown to be a practice, at least in the departments, that the opinions of the Attorney-General have great force; and that we know. There is scarcely a head of a department who would undertake, if a matter has been submitted to the Attorney-General, as is frequently done, to gainsay the opinion of the Attorney-General on the matter.

This act, it should be observed, does not provide in terms that the Secretary of the Interior shall be subject to the general direction of the President, as in the case of the Secretaries of State, War, Navy, and Postmaster-General.

And yet, Mr. President, everybody will understand and admit, I suppose, that in practice he has been just as much subject to the President's dictation and control as the head of any other department.

On the other hand, none of the acts, except that establishing the Treasury Department, subject the chief executive officers to the duty of responding to direct calls for information on the part of the two Houses of Congress.

As I have read, the law creating the Treasury Department requires him to respond to one House or the other.

This, however, has come, by analogy or by usage, to be considered a part of their official business—

This was in 1854—

And the established sense of the subordination of all of them to the President, has, in like manner, come to exist, partly by construction of the constitutional duty of the President to take care that the laws be faithfully executed, and his consequent necessary relation to the heads of departments, and partly by deduction from the analogies of statutes.

Mr. President, on page 344 of this opinion—it is a lengthy opinion—the Attorney-General sums up, and I can not better explain this matter than to read what he says:

Upon the whole, then, heads of departments have a threefold relation, namely, (1) to the President, whose political or confidential ministers they are, to execute his will, or rather to act in his name and by his constitutional authority, in cases in which the President possesses a constitution or legal discretion; (2) to the law; for where the law has directed them to perform certain acts, and where the rights of individuals are dependent on those acts, then, in such cases, a head of department is an officer of the law, and amenable to the laws for his conduct; and (3) to the Congress, in the conditions contemplated by the Constitution.

The courts have said, under such a condition as that, when a law has declared what the act of the officer shall be, the President of the United States can not interfere with him one way



or the other; that the law fixes his duty, and he must discharge his duty according to the statute. That is a plain, common-sense principle, and it hardly seems necessary to cite decisions of the Supreme Court sustaining it. But several might be cited.

Mr. TILLMAN. May I ask the Senator from Colorado a question?

Mr. TELLER. Certainly.

Mr. TILLMAN. In the event a President should be inaugurated who would consider it in his power to forbid an Attorney-General to execute an act of Congress, what would be our remedy?

Mr. TELLER. I do not know, because it has never occurred in my experience. I hardly know what I would say to that inquiry, but I think it would constitute a subject for the House of Representatives, and I think if such an order was made by the Executive it ought to result in impeachment resolutions.

Mr. RAYNER. Mr. President—

The VICE-PRESIDENT. Does the Senator from Colorado yield to the Senator from Maryland?

Mr. TELLER. Certainly.

Mr. RAYNER. Is there any doubt in the Senator's mind that in a case of that sort the fact should be certified to the grand jury, under the Revised Statutes of the United States?

Mr. TELLER. I do not know but that it could be done. I think perhaps it could. But it seems to me the offense is not in the officer who declines to execute the law so much as it is in the Executive, who forbids his executing the law; and the responsibility ought to rest on the Executive and not on the subordinate.

Mr. President, I have some authorities I meant to read, but I have not brought the book with me. John Quincy Adams sent a communication to the Senate as confidential. The Senate considered it, discussed it, and several days later declared that it would not consider it confidential, and published it. I believe there are at least three cases which can be cited where, in defiance of the Executive, where the Executive has asked the Senate to keep a matter confidential, the Senate has declined to do so. John Quincy Adams, in responding to a Senate resolution of this kind, left it to the Senate to determine whether it should be published or not, recognizing that the Senate was the body to determine that question.

We had some controversy the other day about this question. I want to say that in 12 Peters there is a case entitled "Kendall v. The United States." Amos Kendall was Postmaster-General. I have forgotten exactly how the controversy arose, and it is quite immaterial; but it was contended before the Supreme Court of the United States that the Postmaster-General was not subject to congressional action or to the action of one body, which in that case was what it was, and the court said most distinctly that they declined to accept that as a proper statement of the law. I thought I had the case with me. It can be found in 12 Peters. I believe I have here a memorandum that will show exactly what the court did say. This is a citation from it. I will read it. In the case of Kendall v. The United States (12 Peters, 612) is found the following:

It was urged at the bar that the Postmaster-General was alone subject to the direction and control of the President with respect to the execution of the duty imposed upon him by this law, and this right of the President is claimed as growing out of the obligation imposed upon him by the Constitution to take care that the laws be faithfully executed. This is a doctrine that can not receive the sanction of this court—

There is no dissenting opinion in this case—

It would be vesting in the President a dispensing power which has no countenance for its support in any part of the Constitution, and is asserting a principle which, if carried out in its results to all cases falling within it, would be clothing the President with a power entirely to control the legislation of Congress and paralyze the administration of justice.

In another case, which is to be found in *Butterworth v. Hoe* (112 U. S., p. 50), the court said:

The executive supervision and direction which the head of a department may exercise over his subordinates in matters administrative and executive do not extend to matters in which the subordinate is directed by statute to act judicially.

Mr. President, there is some distinction, I will admit, between asking the President of the United States or the head of a department for his opinion and asking him for information as to facts; and yet there can be found cases where the House and the Senate have respectively, singly and alone, asked the President for opinions in which the Presidents have given those opinions and their reasons for certain acts. If the President of the United States is asked why he does a certain thing, I presume, as a rule, he would be quite willing to state to the Senate or the House, whichever might make the inquiry, why he did it, and justify himself in his act. Possibly he might think it

rather beyond our jurisdiction; but when that has been done, I have found no case where the executive officer has declined to act.

Mr. President, I have found a number of cases where the executive officer, sometimes the President, sometimes the heads of departments, has declined to furnish the information. I have found some cases where the House of Representatives has called for information that concerned only the treaty-making power, and the Executive has declined to furnish it. I have found several cases where they called upon the department for matters that touched only the treaty-making power, and yet the department had replied and furnished the information to the House.

I can readily see that in calling upon the Secretary of State for certain information when there were before him negotiations for a treaty or something of that sort there might be a condition where it might not be judicious and wise for him to respond, and I think there are several cases where they have so declined, and in all such cases I believe the House or the Senate has, without question, submitted quietly to that statement. I think there never has been a rule without exceptions. Probably there are some exceptions to the rule that the President of the United States and the heads of departments must reply to an inquiry from the Senate or the House. It is said that exceptions establish the rule. But there is one thing certain, I think, and that is that the Senate or the House will never insist upon the President or the heads of departments furnishing information where the executive officer in a proper spirit replies that he does not think it compatible with the public interest to supply the information. I do not believe there is any danger that the Senate will ever abuse this right or prerogative.

Mr. HALE. May I ask the Senator from Colorado a question?

Mr. TELLER. I yield to the Senator from Maine.

Mr. HALE. Has the Senator found in his investigation of this subject any case where either branch of Congress has called either upon the head of a department or the President for information and the reply has been that the situation involved delicate relations, treaty negotiations with foreign countries, and that the executive branch did not deem it compatible with the public interest to make reply to the interrogatories of either branch, and that response has not been accepted by the Houses of Congress?

Mr. TELLER. No, Mr. President; I have not.

Mr. HALE. But has not the Senator found several cases where the situation is such as I have imperfectly described, where Congress acquiesced in the report from the executive department, and thus in effect, so far as precedent goes, established the attitude of Congress that it will never seek to compel information or papers that involve any delicate relations or negotiations with foreign countries that ought not to be made public? There is no danger of either House taking that attitude.

Mr. TELLER. There is not the slightest danger, as shown by the history of the country. I have found a large number of cases where one House or the other asked for information in which the department from which it asked for it replied that, in the judgment of the department, it would be incompatible with the public interest to furnish it, but the department left that to the Senate or the House. I have found no case where such a response came that the Senate or the House followed it further, showing that we have recognized the right of the department to suggest whether or not it was proper, subject to the right of the Senate or House to determine for itself whether it would insist on the information. The worst case I have found is where the Senate, after it asked for a confidential communication from the President, and the President sent it and said he did not think it ought to be made public, made it public, the Senate not agreeing with the President.

Mr. BACON. Mr. President, with the permission of the Senator from Colorado, I desire to state an instance which occurred since I have had the honor of being a Member of this body, showing another way in which the same end has been accomplished.

During the Spanish-American war, at my instance, the Senate adopted a resolution directing the Secretary of War to communicate certain information to the Senate. The then Secretary of War, who was afterwards one of our colleagues, Mr. Alger, did not think it was safe to communicate that information in a way in which it might reach the public. He sought an interview and obtained it with the then chairman of the Committee on Military Affairs of this body, Mr. Hawley, of Connecticut, and stated to him his reasons why he thought it would be imprudent to respond to the resolution. Mr. Hawley communicated to me the reasons given by the Secretary of War.

I recognized the propriety of those reasons, and at my instance the direction was withdrawn by the Senate.

I am simply giving that as an illustration of the temper and purpose of the Senate, which will always animate this body.

Mr. HALE. If the Senator will allow me, that is precisely in line with the thought that animated me in the question I put to the Senator from Colorado, that in a case of that kind it will be so obvious that the information should not be made public that Congress always has and always will, as it did in this case, so pertinently cited by the Senator, recognize the condition.

Mr. BACON. And the Senate itself, at my instance, withdrew the direction.

Mr. HALE. In my mind there is no danger that either House will ever seek to compel information which, by virtue of conditions surrounding it, ought not, for the benefit of the public service, to be communicated. There is no danger of encroachment by Congress upon the powers of the Executive.

Mr. TELLER. I think the history of this country shows the correctness of the statement just made by the Senator from Maine. It is within the memory of most of us that immediately after the war there was a condition which never before existed in this country, and probably never existed in any other, and, I trust, never again will exist; and yet, with all the bitterness that arose out of the war, with the dislike of the Executive, with the intemperate zeal of the House membership, more particularly than in this body, although some of its was exhibited here, this rule has never been violated during the whole time.

I do not believe that ever the time will come when an executive officer, be he President or the head of a department, will declare that in his judgment matter should be withheld or that Congress, or one branch of Congress, will insist upon it being sent, unless it is a very clear case either of incompetency or something worse on the part of the head of a department.

Mr. President, we do not expect those things. We do not anticipate them. We do not legislate or go upon the theory that we will have a President of the United States who is untrue to the obligations he has taken. In the long line of Presidents that we have had we have had some controversy between the legislative department and the Executive, but only once did it rise to an attempt on the part of the legislative body to punish the Executive, and that is within the memory of all of us, when the House of Representatives impeached the then President, Johnson, and sent the case here to this body to be tried; and after weeks of trial he was acquitted. Even in that hour of bitterness and excitement justice was done. I do not hesitate to say that that was the most extreme exposition of political violence and political temper that has ever been exhibited in this country.

Mr. President, I do not believe, nor did I believe for a moment, that the House of Representatives was justified in that impeachment resolution. I know from absolute observation, sitting in the gallery the day it passed, that it was not the deliberate opinion carefully considered of that body, but it was the excitement of the moment which carried the resolution through. When it came to this body, the prosecution, conducted with the greatest ability by the greatest men then in public life, Members of the House, found in this Chamber men of both political parties who were ready to do justice to the Executive, and he was acquitted.

The verdict of the people then is, I hope, what the verdict of the people would be to-day and you could not find in this whole land to-day a corporal's guard of people who do not approve what the Senate did when it rendered the verdict of acquittal.

Mr. President, we have gone through perilous times. We went through a war unlike any other war in the history of the world, a war between brothers, a war between Anglo-Saxons. When the war was over there was much bitterness, of course. It could not be otherwise. But there is not anywhere in the history of the world a country where strife of that kind has been settled so readily and so certainly as with us. It has shown the strength of American institutions. It has shown that the people of this country are a law-abiding and a law-observing nation.

Mr. President, it is when you look back to the history of this country and what it has gone through and the tests which have been applied that you may reasonably hope for a long continuation of this Government of ours on the principles under which it was originally established.

#### EXECUTIVE SESSION.

Mr. FRYE. I move that the Senate proceed to the consideration of executive business.

The motion was agreed to, and the Senate proceeded to the consideration of executive business. After three hours and

forty minutes spent in executive session the doors were reopened, and (at 5 o'clock and 30 minutes p. m.) the Senate adjourned until to-morrow, Thursday, February 4, 1909, at 12 o'clock m.

#### CONFIRMATIONS.

*Executive nominations confirmed by the Senate February 3, 1909.*

#### POSTMASTERS.

#### WEST VIRGINIA.

James W. Hughes to be postmaster at Huntington, W. Va.  
C. B. Stewart to be postmaster at Northfork, W. Va.

#### HOUSE OF REPRESENTATIVES.

*WEDNESDAY, February 3, 1909.*

The House met at 12 o'clock m.

Prayer by the Chaplain, Rev. Henry N. Couden, D. D.

The Journal of the proceedings of yesterday was read and approved.

#### BONDING GOVERNMENT OFFICERS.

Mr. ALEXANDER of New York. Mr. Speaker, I ask unanimous consent to discharge the Committee of the Whole House on the state of the Union from the further consideration of the bill (H. R. 24135) to amend an act entitled "An act making appropriations for the legislative, executive, and judicial expenses of the Government for the fiscal year ending June 30, 1896, and for other purposes," and to consider the same in the House at this time, which bill I send to the desk and ask to have read.

The Clerk read as follows:

*Be it enacted, etc.,* That section 5 of an act entitled "An act making appropriations for the legislative, executive, and judicial expenses of the Government for the fiscal year ending June 30, 1896, and for other purposes," approved March 2, 1895, be amended so as to read as follows:

"Sec. 5. Hereafter the copy of the oath of office of subordinate officers of the customs, required to be transmitted to the Commissioner of Customs by section 11 of 'An act to amend existing customs and internal-revenue laws, and for other purposes,' approved February 8, 1875, shall be transmitted to the Secretary of the Treasury.

"Hereafter all bonds of the Treasurer of the United States, collectors of internal revenue, collectors, naval officers, surveyors, and other officers of the customs, either as such officers or as disbursing officers of the Treasury, bonds of the Secretary of the Senate, Clerk of the House of Representatives, and the Sergeant-at-Arms of the House of Representatives, and all such bonds now on file in the office of the Comptroller of the Treasury, shall be transmitted to the Secretary of the Treasury and filed as he may direct; and the duties now required by law of the Comptroller of the Treasury in regard to such bonds, as the successor of the Commissioner of Customs and First Comptroller of the Treasury, shall hereafter be performed by the Secretary of the Treasury; and all other bonds which are not required by law to be filed elsewhere shall be filed as the Secretary of the Treasury may direct.

"Hereafter every officer required by law to take and approve bonds shall cause the same to be examined at least once every two years for the purpose of ascertaining the sufficiency of the sureties thereon; and the Secretary of the Treasury shall make such inquiry as may be deemed necessary to ascertain the sufficiency of corporate sureties qualifying on bonds given to the United States and prescribe all necessary regulations governing their acceptance on such bonds before authorizing advances or payments of public moneys thereunder; and every officer having power to fix the amount of a bond shall examine it to ascertain the sufficiency of the amount thereof and approve or fix said amount at least once in two years and as much oftener as he may deem it necessary.

"Hereafter every officer whose duty it is to take and approve bonds shall require that new bonds be given at least once in every four years, but he may require such bonds to be strengthened or that new bonds be given oftener if he deems such action necessary: *Provided*, That when a new bond is given and approved under the provisions of this section, the surety or sureties on the prior bond shall be released from liability for all acts or defaults of the principal which may be done or committed after the date of approval of such new bond: *Provided further*, That the surety or sureties on such new bond, given during the same term of service, shall not be liable for any acts or defaults of the principal which may be done or committed prior to the date of approval of such new bond: *Provided further*, That in the discretion of an officer whose duty it is to take and approve official bonds the requirement of a new bond may be waived for the period of service of a bonded officer after the expiration of a fixed term of service, pending the appointment and qualification of his successor: *Provided further*, That the liability of the principal and sureties on all official bonds shall continue and cover the period of service ensuing after the expiration of a fixed term of service until the appointment and qualification of the successor of the principal; except that where a new bond is required from such officer, after the expiration of his term, the surety or sureties on the prior bond shall not be liable for any acts or defaults of the principal which may be done or committed after the date of approval of such new bond: *Provided further*, That a new bond required of an officer while holding over after the expiration of his term shall have the same force and effect as if given during his regular term of service: *Provided further*, That nothing in this act shall be construed to release the surety or sureties on the prior bond from liability under said bond in any case in which a subsequent bond or bonds may be required by the head of a department, or other approving officer, for the purpose, as clearly shown on the face of such subsequent bond or bonds, of strengthening said prior bond or bonds: *Provided further*, That the nonperformance of any requirement of this section on the part of any official of the Government shall not be held to